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Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO.

870543-CA

IN THE UTAH COURT OF APPEALS

GARFIELD CREDIT UNION,
Plaintiff/Respondent,

vs.

No. 870543-CA

JAMES V. EIDSON and
MRS. JAMES V. EIDSON
Defendants/Appellant.

BRIEF OF RESPONDENT

Appeal from the Third Judicial District Court
In and for Salt Lake County, State of Utah

Judge Pat Brian

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COURT OF APPEALS

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STATEMENT OF JURISDICTION

This appeal was originally filed in the Supreme Court for the State of Utah as Case No. 870298, but was transferred to the Utah Court of Appeals pursuant to rule 4A of the Rules of the Utah Court of Appeals. This Court has jurisdiction over this case pursuant to §78-2a-3 of the Utah Code Annotated.

NATURE OF PROCEEDINGS

This is an appeal by Defendant James V. Eidson from the August 10, 1987 judgment of the Third Judicial District Court in and for Salt Lake County, State of Utah, Judge Pat Brian, Civil No. C86-8607. Judgment was granted in favor of Plaintiff Garfield Credit Union and against Defendants James V. Eidson and Mrs. James V. Eidson in the amount of \$8,279.72, plus interest to date of Judgment in the amount of \$2,714.16, costs of \$91.00, attorneys fees of \$1,615.00, together with interest after Judgment until the date paid at the rate of 18% on the First Cause of Action and 14% on the Second Cause of Action. The Judgment is based upon two Promissory Notes.

STATEMENT OF ISSUES

1. Whether the District Court erred in granting Plaintiff's Motion for Summary Judgment against the Defendant James V. Eidson for the balance due and owing on two Promissory Notes.

2. Whether Appellant's failure to submit evidence and otherwise support his position in the lower court now precludes him from asserting facts which are contrary to those relied upon by the lower court.

STATEMENT OF CASE

This was a lawsuit by Respondent credit union to recover the accelerated balance due on two delinquent Promissory Notes. Appellant James Eidson executed and delivered to Respondent a Promissory Note dated March 17, 1981 in the amount of \$8,542.00, which Note was secured by a vehicle. The collateral was never found nor repossessed by Respondent. Appellant also executed a Promissory Note in favor of Respondent on or about November 20, 1981. Shortly after Appellant's layoff from Kennecott and failure to make any further payments on either of the loans, he moved to Missouri. For a considerable period of time Respondent could not locate Appellant. A total of approximately \$3,069.00 had been paid by the Appellant to the Respondent on the March 17th loan, approximately \$1,633.69 of which was applied to principal. Appellant had also made payments totalling \$180.00 on the November loan, approximately \$76.61 of which was applied to principal. Because most of the payments were not timely made, they were applied mostly to accrued interest as per the terms and conditions of the respective Promissory Notes.

On or about November 14, 1986, Respondent credit union filed its Complaint against Appellant and his Defendant wife to recover the balance of the Promissory Notes. On or about December 10, 1986, Appellant James Eidson was served with a Summons and Complaint by service upon his wife in St. Louis County, Missouri. Appellant's January 2, 1987 Answer denied default under the Promissory Notes and denied the amounts due and owing. Respondent's Motion for Summary Judgment came on for hearing on July 10, 1987 before Judge Pat Brian of the District Court, after proper notice to the Appellant and his Defendant wife at the same address which is still listed on all Appellant's pleadings. Neither Appellant nor his Defendant wife responded or appeared or otherwise raised any issues or defenses in opposition to the Motion. Based upon the pleadings and the Court's determination that there were no material issues of fact in dispute, the Court granted Respondent credit union's Motion for Summary Judgment against both Defendants on August 10, 1987 in the amount of \$8,279.72 plus interest to the date of judgment in the sum of \$2,714.16, costs of \$91.00 and attorneys fees of \$1,615.00, together with interest after the date of judgment until paid at the rate of 18% per annum on the First Cause of Action and 14% per annum on the Second Cause of Action.

Thereafter on or about August 10, 1987, Appellant James V. Eidson filed a Motion for Appeal in the District Court. On or about September 25, 1987 the Appellant filed an Appeal in the Supreme Court

of the State of Utah Case number 870298. The case was then transferred to the Court of Appeals; Defendant filed a Motion for Summary Disposition which was denied by Judge Davidson on December 15, 1987. After receiving notices from the Clerk of the Court of Appeals regarding appeal deficiencies, the Appellant filed an acceptable brief on or about January 26, 1987.

SUMMARY OF ARGUMENT

There were no material issues of fact before the District Court when it considered Respondent's Motion for Summary Judgment. Appellant's Answer to the Complaint set forth defenses relating to the repossession, value and sale of collateral, and with respect to the loan balances. Respondent's Affidavit in support of its Motion of Summary Judgment clearly set forth the schedules of payment history as well as the loan balances. The affidavit also put into evidence the fact that Respondent could not, much less repossess, its collateral. These facts were subsequently not disputed or objected to by Appellant.

In addition to the foregoing, there were no disputed facts. The parties' pleadings agreed in all other respects. Respondent's pleading paralleled Appellant's pleadings regarding the reason Appellant could not make his payments, that being he was laid off and could not make any other payments under a payroll deduction plan. Also agreed is the fact that the parties did not communicate for a long

period of time; this was because Respondent could not locate the Appellant who had moved to Missouri.

Appellant raised no relevant defenses in his Answer, neither has he done so in this appeal. Respondent argues that Appellant's appeal is frivolous and without merit and should be dismissed.

ARGUMENT

THE LOWER COURT PROPERLY EXERCISED ITS DISCRETION IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

In Thornock v. Cook, 604 P.2d 934 (Utah 1979), the Utah Supreme Court stated that when reviewing a grant of Summary Judgment in favor of a Plaintiff, the inquiry is whether there is any genuine issue as to any material fact, and if there is not, whether the Plaintiff is entitled to Judgment as a matter of law.

Appellant raised two defenses in his Answer. He first claimed that the collateral securing one of the obligations had been repossessed and sold. Appellant now alleges that either the collateral was not sold for its value or that the sale proceeds had not been applied to the loan. The second defense raised by Appellant's Answer involves the loan balances. Appellant claimed that the amounts were incorrect or had been paid in full.

The value of the collateral, or whether the Respondent acted as a commercially reasonable secured creditor are not material facts. Throughout the pleadings the Respondents maintain that when the Appellant was terminated from Kennecott and moved to Missouri, Respondent credit union could not locate the Appellant nor his vehicle, and that it was never repossessed.

Although Appellant admitted his financial problems and that his inability to resume making his required payments were due to the loss of his employment, he never submitted any documentation or affidavit to support his position regarding loan balances. Even though a party against whom Summary Judgment has been granted is entitled, on review, to the benefit of having the Court consider all of the facts presented and every inference fairly arising therefrom in a light most favorable to him, there were no facts submitted by Appellant which the Court may consider. See Thompson v. Ford Motor Company, 16 Utah 2d 30, 395 P.2d 62 (1964); and Morris v. Farnsworth Motel, 123 Utah 289, 259 P.2d to 97 (1953).

Appellant simply failed to raise any defenses or submit any facts which were material to this case. In the Motion hearing, the lower court, after reviewing the pleadings, Motion and Affidavit, made the best decision it could under the circumstances, consistent with prevailing law. Respondent was entitled to its Judgment as a matter of law. This appeal by Appellant is frivolous and without merit.

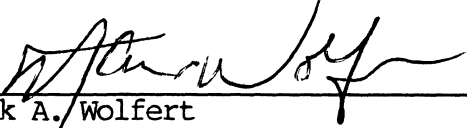
It appearing that the above entitled appeal was filed for and in behalf of Defendant James V. Eidson only, Respondent does not address Appellant's argument regarding the other Defendant.

CONCLUSION

Because Appellant raised no material issues of fact, did not respond or otherwise object to Respondent's Motion for Summary Judgment after proper notice was sent to the address which he still uses, did not submit an Affidavit or other evidence to support his position, and because the lower court's granting of Judgment was therefore justified as a matter of law, Respondent asks this Court of Appeals to dismiss Appellant's appeal.

DATED this 24th day of March, 1988.

BRUCE L. RICHARDS & ASSOCIATES



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MAILED POSTPAID this 24th day of March, 1988, a true
and correct copy of the foregoing Brief of Respondent to:

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